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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 491

BOARD OF SUPERVISORS OF SUFFOLK COUNTY, NEW YORK, *et al.*,

Appellants

v.

I. WILLIAM BIANCHI, JR., *et al.*,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

REPLY BRIEF FOR THE APPELLANTS

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REPLY BRIEF FOR THE APPELLANTS

I. This Court should not fashion forms of local government unless it is mandated by the Fourteenth Amendment.

After reading the many briefs of litigants and amici curiae, it is clear that the appellees, in this case, led by the Solicitor General are advocating a new conceptual theory of an inherent right that municipal government be structured on equal voting rights within the geographical district. Their argument is one of policy and not of constitutional law.

No one has attempted to trace a requirement for a one man, one vote municipal government to the

framers of the Fourteenth Amendment for the very good reason that it cannot be traced to their debates. Indeed, the Solicitor General concedes: "That there is no Federal right to vote in local elections, in the sense that the Federal Constitution does not require popular election, or election by district of members of local governmental bodies" (Brief for the United States, p. 36).[1] It is mere sophistry to say that local government can take any form, then term this to be "irrelevant" (Brief for the United States, p. 36) or a "truism" (Brief for the United States, p. 39, n. 43). Intertwined with these arguments is a subliminal approach to the Court that if only it will take this next step, enlightened sociological benefits will result that otherwise would be frustrated by a state body politic. Following such logic we can add: What simpler way could there be to frustrate, than for the evil state body politic to provide for the conduct of local government by appointed officials?

In *Wesberry* the Court was faced with a clear constitutional mandate and in *Baker* the Court exercised its historical role to fashion a remedy to relieve the state electorate caught up in a "stranglehold". From these cases evolved the device of protecting "equal voting rights" in congressional and state elections.

Just as this Court found no analogy in *Reynolds* between the constitutionally sanctioned federal bi-

[1] This must be conceded because the powers and effect upon the people of the Federal Reserve Board, the Office of Economic Opportunity, the I.C.C., F.T.C., F.C.C., I.R.S. and numerous federal agencies far exceed that of any local municipality. Does *Wesberry* mandate that they be viable elective bodies or their members solely chosen from population centers—or shall it be left to Congress and the President, both constitutionally elected, to make unfettered choices?

cameral form of government and the popular election of bicameral State Legislatures, there is no analogy between the form local government may take and the protection of voting rights on State and Congressional levels. Would it have been provident for this Court to have laboriously created a body of law pertaining to the admissibility of confessions, if, to begin with, there was no constitutional right to a trial? Similarly it begs the question to discuss the *quality* of an individual vote in local government where that structure of local government was never intended to be based on population, and there, concededly, is no constitutional requirement for any particular form of local government.

II. We reiterate that in New York the town is the basic form of rural or suburban government.

Perhaps, it is well to reiterate that the Town is the basic form of rural or suburban government in New York State. The vast police powers and important legislative prerogatives rests with the Town.[2] Unlike the western and southern states' concept of a county, the New York and New England counties are confederations of towns. This definition of a county in New York was long ago stated in *Board of Supervisors* v. *Ellis*, 59 N.Y. 620, 624 (1875):

> "* * * The board of supervisors is not a county. It is an aggregate of certain town officers which, for certain specified purposes, is the representa-

[2] New York Town Law, Arts. 4, 9, 16 (fire and traffic control, public health, public works, building codes, peace, order and safety, public welfare, boats, amusements, hotels, tourist camps, airports, zoning and many more).

tive of the county. It is an important and prominent representative, but not the only one. The county had other agents through whom it acted, and it at times acted through the board as its agent. Boards of supervisors are classed as subordinate public agents (*Hull* v. *Supvrs. of Oneida Co.*, 19 J.R., 259.) They are agents with limited powers which they may not exceed and give any validity to the excess.".

Later, in approving the adoption of a county manager form of government for Monroe County, the New York court stated in *Cort* v. *Smith*, 249 App. Div. 1, 6; 291 N.Y. Supp. 54; aff'd 273 N.Y. 481; 6 N.E. 2d 414:

> "It must also be remembered that the board of supervisors is not the county, but a body of town and city officers acting for and on behalf of the county in such matters as have been turned over to them by law. (*Board of Supervisors* v. *Ellis*, 59 N.Y. 620, 624; *People ex rel. Slosson* v. *Board of Supervisors*, 166 App. Div. 844, 846.)
>
> "That which the Legislature has given the Legislature can take away. It can deprive the board of its purely statutory duties, (*County of Queens* v. *Petry*, 54 App. Div. 115). But it cannot go so far as to abolish the office of supervisor by indirection. (*People ex rel. Burby* v. *Howland*, 155 N.Y. 270.) That has not been done by this statute."

Appellees' Brief, p. 33, n. 33 cites the recent New York State constitutional requirement of Art 9, Section 1(a) that "Every local government . . . shall

have a legislative body elective by the people thereof." It has never been held that this requires the Board of Supervisors to be elected by vote of the entire county or in any particular manner. If such be the New York State constitutional requirement the interim and permanent plans are clearly violative since these plans continue the practice of allowing only the electors within a town to vote for the representatives from that town.

III. The Department of Justice should concern itself with actual voter discrimination not fancied.

Municipal government has been dynamic in New York State and has been responsive to public demand and political pragmatism; although it may have financial difficulties due to the Washington drain. It is the specific purpose and intent of our county structure, prior to the coerced change by the Federal District Court, that each town would be equally represented in the Suffolk County Council of Towns. There is no racial discrimination in our form of government. In fact, our traditional but progressive county has attracted new residents of all origins. We need no preachments from the Department of Justice to teach us equality and liberty. The people of Suffolk County can change the government by local initiative whenever desired. They did it in 1958, and the people of the State of New York can arrange their internal affairs without federal supervision which has already disenchanted the legislatures of at least 32 states.

In the name of the Constitution of the United States, we have now been foisted with a scheme of voting which perpetuates the concept of a town, which we hold to be true, but totally destroys the responsibility of government. Posing as elected officials of the entire county, Supervisors from the Towns of Babylon, Islip and Huntington stand immune to the needs or desires of the entire remainder of the county. The political organization that can control these three towns can, as a practical matter, control the county's purse strings and more. The Department of Justice blithely sidesteps this type of invidious discrimination (Brief of the United States p. 80).

We are told that a system of pure weighted voting is unconstitutional but by adding just *four* additional representatives this pseudo-democratic plan becomes constitutional. We abhor this logic and public policy based on imagery.

IV. This Court need not dictate the form of local government to preserve *Baker* and *Reynolds*.

As this Court so quickly demonstrated in *Gray* v. *Sanders*, 372 U.S. 368, a rule can be shaped which prohibits a state from subverting the people's equal share of state sovereignty without dictating any particular form of elective local government. This would be akin to the power of a state to fashion its own judicial systems or administrative and executive systems. There is no constitutional imperative to *elect* judges or commissioners, sheriffs or governors. Conversely, there is no particular state court structure that is im-

pervious to federal constitutional rights. Likewise, the particular form of government a state may conclude is adaptable to local needs is a matter of state and local concern.

Respectfully submitted,

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